



Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. 200500010 Issuance Date:
September 20, 2006

Stream: Unnamed tributaries of Kiah Creek Closing Date:
October 19, 2006

Please address all comments and inquiries to:

U.S. Army USACE of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the USACE request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Argus Energy WV, LLC
PO Box 200
Dunlow, West Virginia 25511

LOCATION: The proposed project area is located on the Ranger USGS quadrangle at latitude 38° 01'03" and longitude 82° 14'40" in the Stonewall District of Wayne County near Cove Gap, West Virginia. The proposed project would result in disturbances to six unnamed tributaries (Tributary 1, Tributary 2, Tributary 3, First Right Fork of Tributary 2, First Right Fork of Tributary 3, and Second Right Fork of Tributary 3) of Kiah Creek and Kiah Creek of the East Fork of Twelvepole Creek of Twelvepole Creek of the Ohio River.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and fill material into 1.22 acres of Wet-Meadow Wetland and 1,733 linear feet (0.208 acre) of ephemeral stream channels in conjunction with the construction and operation of the Kiah Creek Coalburg Surface Mine (Surface Mining Control and Reclamation Act Permit S-5015-04). For details regarding the proposed stream impacts please reference the table below.

Stream Description/Location	Stream Name	Type of Impact, Type of Channel	Impact	
			Feet	Acres
Stream Section in Fill No. 3	Tributary 1	Permanent, Ephemeral	244	.061
Stream Section Above Fill 3 in the Area Mined	Tributary 1	Temporary, Ephemeral	351	.047
Stream Section in Fill No. 1	Tributary 2	Permanent, Ephemeral	101	.005
Stream Section Above Fill 1 in the Area Mined	Tributary 2	Temporary, Ephemeral	233	.026
Stream Section Above Fill 1 in the Area Mined	Tributary 2, First Right Fork	Temporary, Ephemeral	28	.01
Stream Section in Fill No. 1	Tributary 3	Permanent, Ephemeral	108	.012
Stream Section Above Fill 1 in the Area Mined	Tributary 3	Temporary, Ephemeral	282	.029
Stream Section in Fill No. 1	Tributary 3, First Right Fork	Permanent, Ephemeral	4	0
Stream Section Above Fill 1 in the Area Mined	Tributary 3, First Right Fork	Temporary, Ephemeral	241	.011
Stream Section Above Fill 1 in the Area Mined	Tributary 3, Second Right Fork	Temporary, Ephemeral	148	.007
Wetland in Fill No. 3	-----	WETLAND	-----	1.220
	TOTALS	Permanent, Ephemeral	457	0.078
		Temporary, Ephemeral	1276	0.130
		WETLAND	-----	1.220

The Kiah Creek Surface Mine would be a proposed contour and highwall mining operation that would recover identified reserves in the Coalburg Seam. Surface disturbance associated with the proposed project would be approximately 18.33 acres. The proposed mine plan would be implemented in four phases over a period of one year. Details regarding the phases can be found in Section N of the applicant's Surface Mining Application on file at the WVDEP. Plans for the proposed project are attached to this public notice.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall project purpose. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

MITIGATION PLAN: The applicant has submitted a Compensatory Mitigation Plan (CMP) to compensate for permanent and temporary impacts to waters of the U.S. that are regulated by the USACE. In order to compensate for construction-related impacts, the applicant proposes to create 1,070 linear feet of intermittent stream channels, re-establish and restore 1,276 linear feet of intermittent stream channels affected mineral removal operations and sediment pond construction, and create 3.072 acres of wetlands downstream from the project area.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the WVDEP.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. In a letter dated December 6, 2005, the West Virginia Division of Culture and History (SHPO) stated that this project would have no effect on any known historic, architectural or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places. A copy of this public notice will be sent to the SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: In a letter dated November 17, 2005, the U. S. Fish and Wildlife Service concluded since less than 17 acres of Indiana Bat maternity habitat would be impacted and there are no known abandoned mine portals within the project area, no further consultation under the Endangered Species Act (87 Stat. 884 as amended; 16 U.S.C. 1531 et seq.) is required.


PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest, which may be adversely affected, and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation,

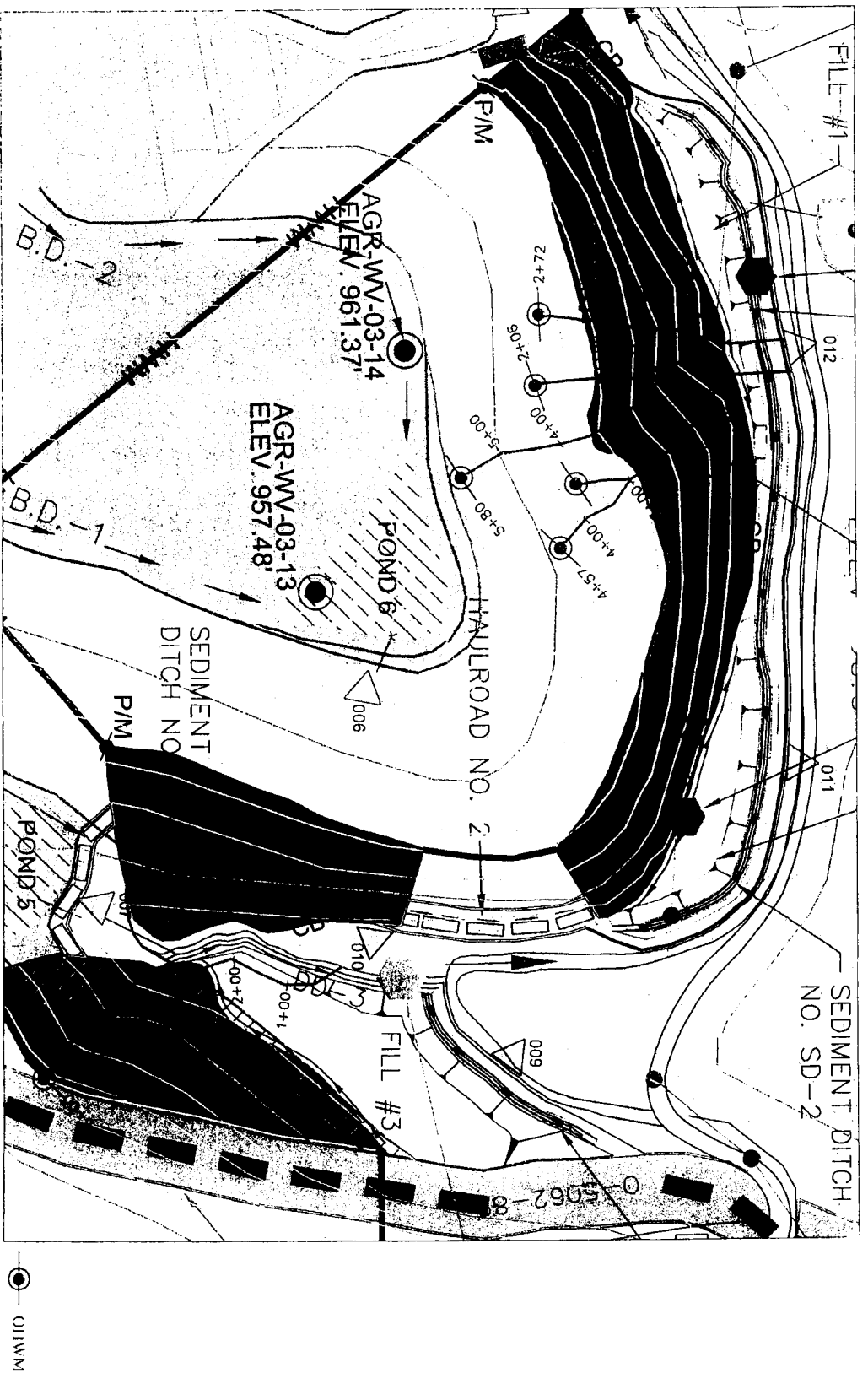
water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources.


Ginger Mullins, Chief
Regulatory Branch

(W)



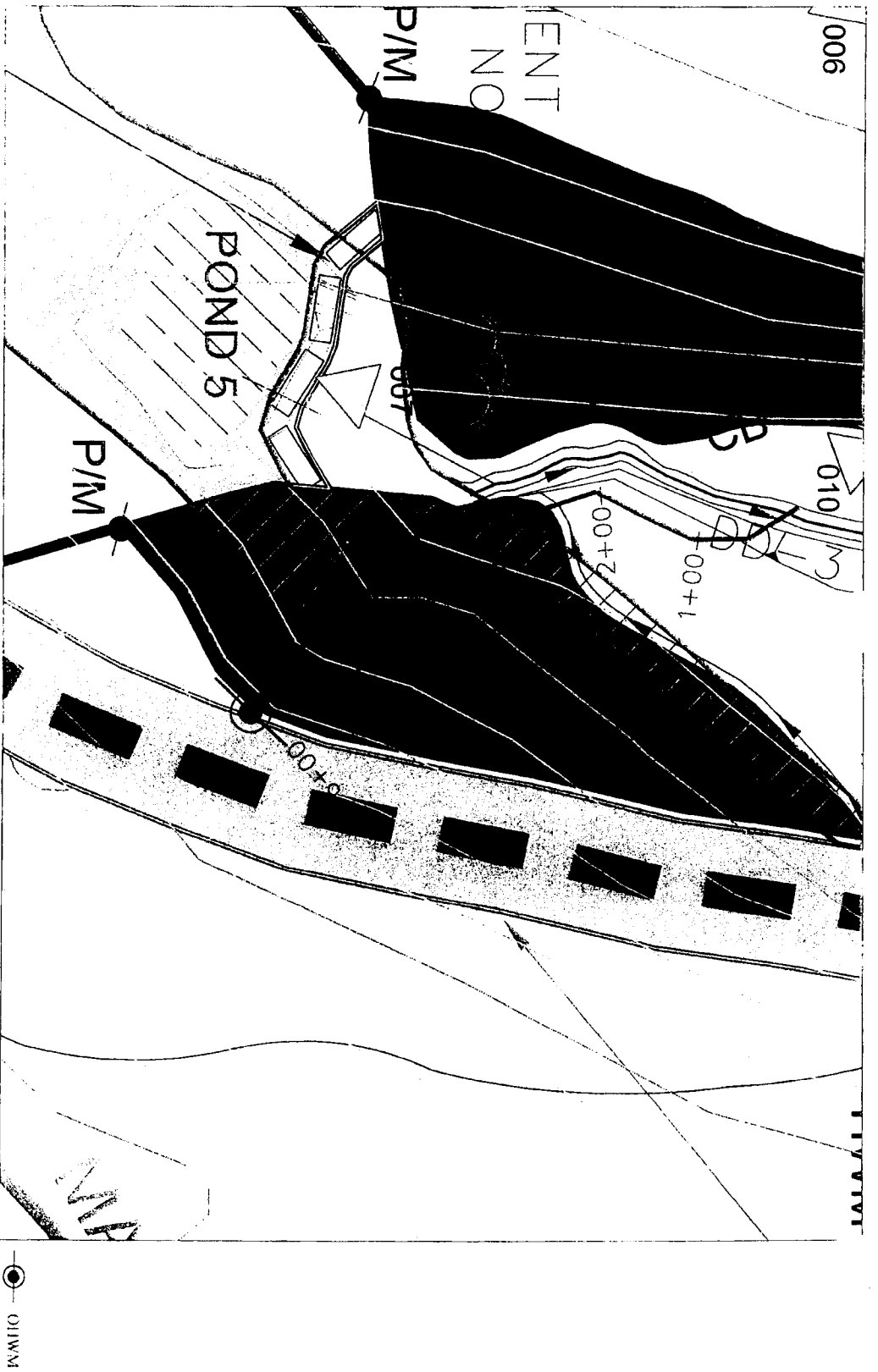


FIGURE 3. Drawing of Tributary 1 associated with the Kiah Creek Coalburg Surface Mine. Argus Energy-WV, LLC, March 2005.

*Jurisdictional Determination Study at the Kiah Creek Coalburg Surface Mine.
REI Consultants, Inc., March 2005.*

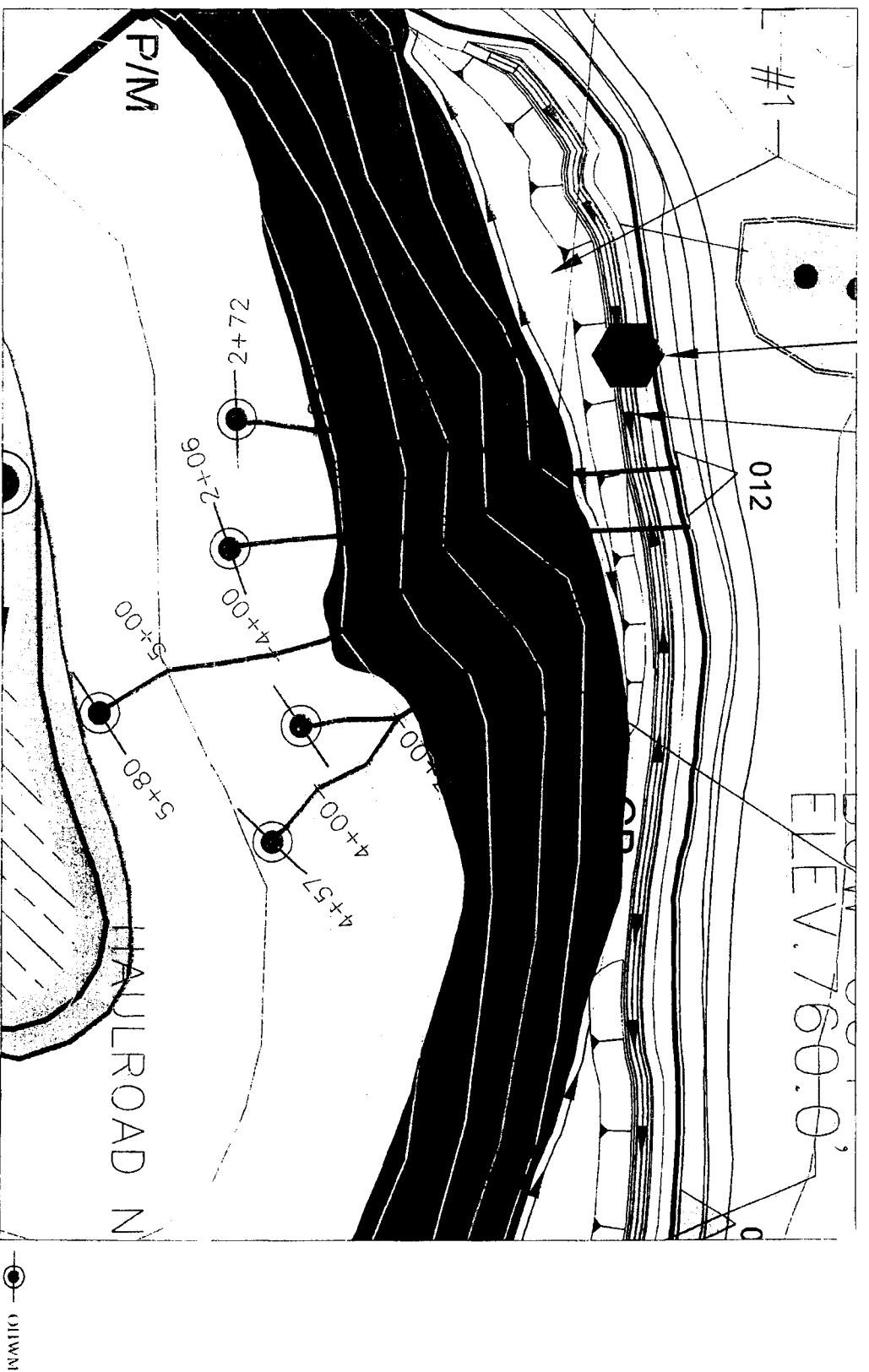


FIGURE 4. Drawing of Tributaries 2 & 3 associated with the Kiah Creek Coalburg Surface Mine. Argus Energy-WV, LLC, March 2005.